



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 28, 1996

Ms. Salima Brown
Open Records Liaison
Office of the Attorney General
Executive Administration
P.O. Box 12548
Austin, Texas 78711-2548

OR96-0809

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39911.

The Office of the Attorney General of the State of Texas (the "Attorney General") received a request for various information pertaining to the case of *The State of Texas v. The American Tobacco Co., et al*, No. 5-96CV91 (Dist. Ct. of Eastern Dist. of Texas, Texarkana Div., Mar. 28, 1996). You inform us that you have released to the requestor a copy of the requested contingency fee contract and state that there are no other contracts responsive to the request. You also say that the Attorney General does not possess any records responsive to the request for "documents detailing internal cost, expense and fee arrangements among the lawyers and law firms representing the state in the [referenced] litigation." You assert that "[c]orrespondence between the Attorney General or his subordinates and the attorneys general of other states with regards to tobacco litigation" is excepted from required public disclosure based on section 552.103 of the Government Code. You submitted representative samples of the correspondence you seek to withhold from public disclosure.¹

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The Attorney General may therefore withhold the requested records from required public disclosure based on section 552.103 of the Government Code.²

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/ch
Ref.: ID# 39911

Enclosures: Submitted documents

²We note that if the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

cc: Mr. Robert Elder, Jr.
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(w/o enclosures)